

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND)
COMPOUNDING PHARMACY, INC.) MDL No. 2419
PRODUCTS LIABILITY LITIGATION) Dkt. No. 1:13-md-2419-RWZ

This Document Relates to:)
All Cases)

The Tennessee Clinic Defendants'
Motion to Reconsider and Revise Specific Provision in MDL Order No. 6
to Allow All Parties Equal Access to
the Documents Produced by NECC to the PSC

Saint Thomas Outpatient Neurosurgical Center, LLC; Howell Allen Clinic, a Professional Corporation; John W. Culclasure, MD; Debra V. Schamberg, RN; Specialty Surgery Center, Crossville, PLLC; Kenneth R. Lister, MD; Kenneth Lister, MD, PC; and Donald E. Jones, MD (collectively “the Tennessee Clinic Defendants”) move the Court pursuant to Fed. R. Civ. P. 54(b), Fed. R. Civ. P. 26, and the interests of justice, to grant all parties equal access to the documents in the U.S. Legal document repository produced by the New England Compounding Center (“NECC”) to the Plaintiffs’ Steering Committee (“PSC”).

As part of informal discovery in these cases, the NECC Trustee has produced more than 40,000 documents, presently housed in an electronic document repository, to the PSC. MDL Order No. 6 stated that “[m]aterials produced informally or pursuant to a confidentiality or a protective order by the trustee to the Plaintiffs’ Steering Committee or the Creditors’ Committee shall not be made available through the repository.”¹

The Trustee and the PSC have refused the Clinic Defendants (and, presumably, all other involved parties other than those participating in mediation) access to these documents without substantive justification beyond their unilateral agreement to keep them confidential.

For the reasons explained in the contemporaneously-filed Memorandum in Support, the Tennessee Clinic Defendants move for modification of MDL Order No. 6 to allow them equal access to this document repository.

Pursuant to Local Rule 7.1(a)(2), counsel for the Tennessee Clinic Defendants hereby certify that they have conferred and attempted in good faith to resolve or narrow the issue.

¹ MDL Order No. 6 § III.D.5.

Respectfully submitted,

GIDEON, COOPER & ESSARY, PLC

/s/ Chris J. Tardio

C.J. Gideon, Jr.²

Chris J. Tardio²

Alan S. Bean³

Matthew H. Cline²

John-Mark Zini²

315 Deaderick Street, Suite

Nashville, TN 37238

Ph: (615) 254-0400

Fax: (515) 254-0459

chris@gideoncooper.com

*Attorneys for the Tennessee
Clinic Defendants*

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing and copies will be e-mailed or mailed via regular U.S. mail to those participants identified as unregistered this 27th day of March, 2014.

/s/ Chris J. Tardio

Chris J. Tardio

² Admitted pursuant to MDL Order No. 1.

³ Admitted *pro hac vice*.